

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 97-0516

Withholding Tax

For The Period: 1996

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ISSUE

I. Civil Penalty - \$10.00 for each failure to timely file

Authority: IC 6-8.1-10-6(a)

Taxpayer protests the imposition of a penalty by the Department for the taxpayer's failure to timely file their 1996 W-3 return timely.

STATEMENT OF FACTS

The taxpayer is required to file the Annual Withholding Tax Reconciliation Return within two months following the end of the year. Taxpayer is an Indiana resident who has filed several Indiana returns. Taxpayer states that his mother was very ill during the filing time period. He states that the returns were done, but were not mailed on time.

DISCUSSION

The taxpayer protests the Department's imposition of late filing penalties for failure to timely file information returns. Indiana Code Section 6-8.1-10-6(a) imposes a \$10.00 penalty for each failure to file a timely return.

The taxpayer states the restaurant has been in operation in Indiana for approximately twenty-five years, and it has a good track record. During the latter part of January 1997, the taxpayer's mother became ill. Taxpayer filled out the returns, but did not mail them on time. Taxpayer claims to be only six days late, and no money was due at the time of the filing.

The law places the burden upon the taxpayer to assure that returns are timely filed. It seems that the returns were prepared, but not sent which is clearly negligent. Furthermore, taxpayer had one month after mother's illness to mail the returns. Thus, the Department was justified in assessing the statutory \$10.00 per return mandated by IC 6-8.1-10-6(a).

FINDINGS

The taxpayer's protest is denied. The penalty is appropriate as the taxpayer did not show reasonable cause in the failure to timely file.